SUPREME COURT, U. S.

No. 1173

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In the Supreme Court of the United States

OCTOBER TERM, 1968

HARLEY D. JONES,

Plaintiff-Appellant,

vs.

STATE OF ILLINOIS BY ITS ELECTORAL BOARD,

Defendant-Appellee.

(On appeal from the Supreme Court of Illinois)

MOTION TO REQUIRE THE STATE AND LOCAL OFFICIALS OF THE STATE OF ILLINOIS PROMPTLY TO CONDUCT AN ELECTION FOR THE OFFICE OF LIEUTENANT GOVERNOR OF THE STATE OF ILLINOIS.

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JONES *v.* ILLINOIS BY ITS ELECTORAL BOARD.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 1173. Decided May 19, 1969.

PER CURIAM.

The decision of the Illinois Supreme Court having been rendered prior to our decision in *Moore* v. *Ogilvie*, 394 U. S. ——, which overruled *MacDougall* v. *Green*, 335 U. S. 281, the judgment is vacated and the cause remanded so that it can be reconsidered in light of the changed circumstances.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART would affirm the judgment.

The Court Made The Following Announcement:

ADVISEMENT DOCKET

No. 41652 — Harley D. Jones, appellant, vs. State of Illi-
Adv. 79 nois by its Electoral Board, appellee.

In September 1968 this appeal was filed from an order of the circuit court affirming an order of the State Electoral Board which had ruled that appellant was not entitled to certification as an independent candidate for the office of Lt. Governor in the 1968 election. In January 1969, we dismissed the appeal as moot. The United States Supreme Court vacated our judgment and remanded the cause for reconsideration in the light of changed circumstances resulting from its opinion in *Moore* v. *Ogilvie*, 394 U.S. ....., 23 L. Ed. 2d 1.

Moore v. *Ogilvie* held that since the record reflected a continuing controversy the case was not moot and that section 10-3 of the Illinois Election Code was invalid. That section required that a person seeking nomination as an independent candidate for a State office submit nomination papers signed by not less than 25,000 qualified voters, including the signatures of at least 200 voters from each of at least 50 counties.

Appellant contends that the remand of this case with directions to reconsider it in the light of *Moore* v. *Ogilvie* requires us to consider certain claims advanced by appellant which he says have not been resolved. These claims relate to the composition of the Electoral Board and the provision that a person who has already voted at a primary election is not qualified to sign a nominating petition for a candidate for the same office to be voted upon at the general election.

This action was instituted under section 10-10.1 of the Election Code which provides a method by which a candidate aggrieved by a decision of the Electoral Board may seek judicial review of the action of the Board. That review is limited to the issues properly considered by the Board. Under Section 10-10 of the Code the Board shall "take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers which they purport to be . . . . and in general shall decide whether or not the certificate of nomination or nomination papers on file are valid . . . ."

The issues which appellant now asks us to consider are not within the scope of the review contemplated by the Election Code; they were not open for consideration in the circuit court, and they are not open for consideration in this court in the present action. The motion of appellant to fix a briefing schedule is therefore denied.

The judgment of the circuit court of Sangamon County is reversed.

The State Supreme Court seemed to ignore and disregard this Supreme Court decision and the U. S. Supreme Court decision of Alabama, *Hadnott* v. *Amos*, No. 647 October Term 1968.

PLAINTIFF-APPELLANT'S MOTION TO STRIKE THE ANSWER OF DEFENDANT-APPELLEE TO PLAINTIFF-APPELLANT'S MOTION FOR A SETTING UP OF A BRIEFING SCHEDULE.

Now Comes, Harley D. Jones, Attorney, and moves to strike the answer of defendant, Appellee, State of Illinois by its Electoral Board to his motion for a setting up of a briefing schedule by this Court because of the reversal of the U. S. Supreme Court of this Illinois Supreme Court's dismissal of this case on January 16, 1969. The U. S. Supreme Court reversed and remanded the dismissal order of this Court on May 19, 1969, in reference to the Illinois Constitutional issues presented and set out in the plaintiff's Appellant briefs on file in this Court and in the light of its decision in the case of *Moore* v. *Ogilvie*, 394 U. S.

.....

1. That defendant-Appellee admits in their answer that the method of nomination under Illinois Law is unconstitutional.

2. That defendant-Appellee's mootness point is threadbare for they raised it in this Court and secured a dismissal last January 16, 1969, but suffered a reversal and a remand by the U. S. Supreme Court. Their mootness point is now reduced to citing dissenting opinions of the Supreme Court, after being soundly thrashed on this point in the

U. S. Supreme Court. This plaintiff-Appellant stressed the impractical nature of this mootness point on page 22 of its Jurisdictional Statement to the U. S. Supreme Court, and was before that body for consideration.

In *Gray* v. *Sanders,* 372 U. S. 360 (1963) at page 375, and 376, the Court stated:

> "Moreover, we think the case is not moot by reason of the fact that the democratic Committee voted to hold the 1962 primary on a popular vote basis—in addition, the voluntary abandonment of a practice does not relieve the court of adjudicating its legality, particularly, where, the practice is deeply rooted and of long standing. For if the case was dismissed as moot appellants would be 'free to return to—(their) old ways'."

United States v. *Grant Co.,* 345 U. S. 629 at 632, the Court further went on to state:

> "This together with a public interest in having the legality of practice settled, militates against a mootness conclusion. *U.S. Trans-Missouri Freight Association, supra,* at 309-310. For to say that the case has become moot means the defendant is entitled to a dismissal as a matter of right. *Labor Board* v. *General Motors Corporation,* 179 F. 2nd 221 (1950).
>
> "The Courts have rightly refused to grant defendants such a powerful weapon against public law enforcement."

3. That defendant-Appellees are pleading legal conclusions of their own when they say in their paragraph 6 of of their answer that "The issues raised by him do not present substantial justiciable issues." They used the same language in their briefs in the U. S. Supreme Court, and met with a reversal of the Illinois Supreme Court order of dismissal of January 16, 1969 in a rather summary manner.

4. The plaintiff-Appellant objects to the pleading tactics of the defendant-Appellee in styling their answer as an answer and then in their prayer for relief asking for a dismissal of the proceedings without any basis. This cause is on a remand from the U. S. Supreme Court.

5. That an examination of the plaintiff-Appellant's brief on file in this Court and the U. S. Supreme Court Jurisdictional statement and reply brief will disclose grave Illinois and U. S. Constitutional questions which this court in the exercise of their power should and must resolve. Particularly, the constitutionality of Chapter 46, Article 10, Section 4 disqualifying any person who has voted at a primary election for state-wide office from signing an independent candidate or candidates' petition for the same office.

Mr. Justice Black in *Williams* v. *Rhodes* decided October 15, 1968, 89 Sup. Ct. 5 (1968) at page 11 stated:

> "There is, of course, no way two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedom."

Another serious constitutional question is presented in Chapter 46, Article 7, Section 14, where the respective Democratic and Republican State chairman are sharing sovereign powers with the Elected officials of the State on the Electoral Board, and the resultant conflict of interest therein presented while sitting as a member of the Electoral Board as they did in the last November 1968 election. How does this square with our Illinois Constitutional provision forbidding State officials from having an interest in contracts or school officials interested in con-

fracts of purchase they procure for the state. Does this not represent state action enforcement of rules of the party? The U. S. Supreme Court in *Gray* v. *Sanders,* 372 U.S. 368 (1968) at page 374 stated that:

> "Judge Sibley in *Chapman* v. *King,* 154 F.2nd 460, showed with meticulous detail the manner in which Georgia regulates the conduct of party primaries id. pp. 463-464 and he concluded: 'we think these provisions show that the State through the managers it requires, collaborates in the conduct of the primary, and it put its power behind the rules of the party. It adopts the primary as a part of the public election machinery. The exclusions of voters made the party by the primary rules become exclusions enforced by the State.' " id. p. 464.

Continuing from page 374, this court state: "We agree with that result and concluded that the State regulation of this preliminary phase of the election process makes it state action." See, *U. S.* v. *Classic,* 313 U.S. 649 and *Smith* v. *Allwright,* 321 U. S. 649.

Further, the language in Chapter 46, Article 10-5-6-7-8-9 and 10 are so ambiguous that it is doubtful whether any nominating signatures are required to nominate. These questions are pending in this court and unanswered, and should be resolved so as to provide guidelines for future elections.

In *Gray* v. *Sanders, supra,* at 379-380, the Court stated:

> "The only weighing of votes sanctioned by the constitution concerning matters of representation, such as allocation of Senators irrespective of population and the use of electoral college in the choice of President."
>
> "Yet when Senators are chosen, the Seventeenth Amendment states the choice must be made 'by the

people.' But once the class of voters is chosen and their qualifications specified, we seen no constitutional way by which equality of voting power may be evaded.''

''As we stated in *Comillion* v. *Lightfoot,* 364 U.S. 339 at 347: 'When an exercise of power wholly within the domain of state interest, it is insulated from federal judicial review.' But such insulation from fedried over when State power is used as an instrument for circumventing a federally protected right.''

6. That this court has ample precedent to grant relief in calling for a new election for Lieutenant-Governor in 1970 of this State of Illinois because of the admitted unconstitutionality of the Section 10-2 and 3, and as found so by the U. S. Supreme Court in *Moore* v. *Ogilvie, formerly, Shapiro.* The U. S. Supreme Court this year in the *Green* case order a new county election in Alabama when 7 candidates were left off the ballot. Incidentally, this election was held a few weeks ago and all 7 omitted candidates were elected to office. Further, the Federal District Court in Chicago held the aldermanic elections in Chicago illegal because of the apportionment of ward sizes. New aldermanic elections were deferred until the 1970 elections.

7. That this plaintiff-Appellant objects to the violation of Rule 561 by the defendant-appellant in asking more than 4 days to file their objection to plaintiff-appellant's Motion for a setting of a briefing schedule. The motion was mailed to them on August 29, 1969, and their notice shows a September 8, 1969 mailing date, or way past the 4 day requirement of this Court.

Wherefore,, plaintiff-appellant respectfully submits that this Court strike the so-called answer of the defandant-appellee, set up a briefing schedule, or in the alternative enter an order declaring all the above sections unconstitutional and invalid, and order a new election for Lieutenant-Governor in 1970, for it is apparent that the defendant-appellee could not come up with any new legal reasoning or briefs or cases which our U.S. Supreme Court has not overruled.

Respectfully submitted,

HARLEY D. JONES,
Pro Se.